

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS

GALVESTON DIVISION

DAVID LAMONT BELL, #1115935	§	
	§	
V.	§	CIVIL ACTION NO. G-04-530
	§	
DOUG DRETKE, ET AL.	§	

ORDER OF DISMISSAL


Before the Court for its Order of Acceptance is a Report and Recommendation of the United States Magistrate Judge, entered on October 23, 2006, which recommends that the above-styled cause be dismissed with prejudice. Plaintiff has filed objections to the Report and Recommendation, reasserting facts which have already been pleaded and which were correctly addressed by the Magistrate Judge. Plaintiff's claims, even if true, fail to rise to the level of a constitutional violation cognizable under Section 1983. Moreover, with respect to Plaintiff's complaint that he missed one meal, (irrespective of the religious claim), the deprivation of food constitutes cruel and unusual punishment only if it denies a prisoner the "minimal civilized measures of life's necessities." *See Talib v. Gilley*, 138 F.3d 211, 213 (5th Cir. 1998). Missing one meal hardly meets this threshold; even on a regular, permanent basis, it has been held that two meals a day may be an adequate amount of food. *See Green v. Ferrell*, 801 F.2d 765, 770 (5th Cir. 1986); *see also Eason v. Thaler*, 73 F.3d 1322, 1327 (5th Cir. 1996)(*per curiam*). This claim is frivolous.

After *de novo* review pursuant to 28 U.S.C. §636 (b)(1)(C), this Court is of the opinion that the Report and Recommendation of the Magistrate Judge should be, and it is hereby, **ACCEPTED** in its entirety and incorporated by reference herein. It is the **ORDER** of this Court that this cause is **DISMISSED** with prejudice as frivolous and for failure to state a claim for which relief can be granted.

This Order does not release Plaintiff or the Texas Department of Criminal Justice, Institutions Division from the obligation to pay the filing fee previously imposed. Plaintiff is advised that if he appeals this dismissal, he will be required to pay the appeal fee of \$455.00 pursuant to the Prison Litigation Reform Act, and he must submit a 6-month certificate of his inmate trust account when he files his notice of appeal.

A certified copy of this Order shall be mailed to: **TDCJ-Office of the General Counsel**, P.O. Box 13084, Austin, Texas, 78711; and, to **TDCJ Local Funds Division**, P.O. Box 629, Huntsville, TX 77342-0629.

DONE at Galveston, Texas, this the 21st day of November, 2006.



Samuel B. Kent
United States District Judge